

|                                       |   |                                 |
|---------------------------------------|---|---------------------------------|
| SHAWN RUYBAL,                         | ) |                                 |
|                                       | ) |                                 |
| Plaintiff,                            | ) | Case No.: 2:15-cv-00508-GMN-NJK |
| vs.                                   | ) |                                 |
|                                       | ) | <b>ORDER</b>                    |
| LIBERTY MUTUAL FIRE INSURANCE         | ) |                                 |
| COMPANY, a Wisconsin corporation;     | ) |                                 |
| DOES I through XX, inclusive and ROE  | ) |                                 |
| CORPORATIONS I through XX, inclusive, | ) |                                 |
|                                       | ) |                                 |
| Defendants.                           | ) |                                 |
|                                       | ) |                                 |

## I. BACKGROUND

Plaintiff filed his Complaint on February 9, 2015, in Clark County District Court asserting breach of contract, breach of covenant of good faith and fair dealing, unjust enrichment, and unfair practices in settling claims. (*Id.* ¶¶ 20–41). Liberty Mutual removed the case to this Court under diversity jurisdiction. (Pet. for Removal, ECF No. 1). In response, Plaintiff filed the instant Motion to Remand. (ECF No. 9).

## 1    **II.    LEGAL STANDARD**

2            If a plaintiff files a civil action in state court, a defendant may remove that action to a  
3 federal district court if the district court has original jurisdiction over the matter. 28 U.S.C.  
4 § 1441(a). Removal statutes are strictly construed against removal jurisdiction. *Ritchey v.*  
5 *Upjohn Drug Co.*, 139 F.3d 1313, 1317 (9th Cir. 1998). “Federal jurisdiction must be rejected  
6 if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles*, 980 F.2d  
7 564, 566 (9th Cir. 1992) (quoting *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th  
8 Cir. 1979)). The removing defendant always has the burden of establishing that removal is  
9 proper. *Gaus*, 980 F.2d at 566. “If at any time before final judgment it appears that the district  
10 court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).  
11 Under 28 U.S.C. § 1332, complete diversity of citizenship is required, and each plaintiff must  
12 be a citizen of a different state than each defendant. *Morris v. Princess Cruises, Inc.*, 236 F.3d  
13 1061, 1067 (9th Cir. 2001).

## 14    **III.    DISCUSSION**

15            For the reasons discussed below, the Court finds that the removing Defendant has  
16 established that this Court has jurisdiction over the instant action.

### 17            **A.    Diversity Jurisdiction**

18            Under 28 U.S.C. § 1332(a)(1), “[t]he district courts shall have original jurisdiction of all  
19 civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of  
20 interest and costs, and is between citizens of different States,” and under § 1332(c)(1), barring  
21 exceptions, “a corporation shall be deemed to be a citizen of every State and foreign state by  
22 which it has been incorporated and of the State or foreign state where it has its principal place  
23 of business....”

24            Liberty Mutual asserts that “Plaintiff was and is a resident and citizen of the State of  
25 Nevada.” (Statement Regarding Removal, 2:9–10, ECF No. 7). Moreover, Liberty Mutual

1 asserts that it is and was at all relevant times incorporated in Wisconsin with its principal place  
2 of business in Massachusetts, which makes it a citizen of both Wisconsin and Massachusetts  
3 and satisfies the diverse citizenship requirement. (*Id.* 2:10–15). Furthermore, Defendant asserts  
4 that the amount in controversy exceeds the \$75,000 jurisdictional minimum because the policy  
5 limits at issue are \$500,000 per accident, and Plaintiff also requests attorneys’ fees and punitive  
6 damages. (*Id.* 2:17–3:1). Altogether, these facts satisfy the diversity jurisdiction requirements,  
7 barring exceptions.

### 8 **B. Diversity Jurisdiction Exceptions**

9 However, “in any **direct action** against the insurer of a policy or contract of liability  
10 insurance...to which action the insured is not joined as a party-defendant,” corporations are  
11 also citizens of “every State and foreign state of which the insured is a citizen.” 28 U.S.C. §  
12 1332 (emphasis added).

13 Plaintiff asserts that from a public policy perspective and under the plain language of §  
14 1332(c)(1), direct actions should include any action taken against an insurer in which the  
15 insured member is not joined as a defendant and thus render the insurer a citizen of the state  
16 where the insured member resides. (Mot. to Remand, 8:12–23, ECF No. 9). Because Plaintiff,  
17 Liberty Mutual’s insured, was not joined as a defendant in the instant action against Liberty  
18 Mutual, Plaintiff argues that the Court should recognize Liberty Mutual as a citizen of  
19 Nevada—where Plaintiff resides. (*Id.* 4:6–9).

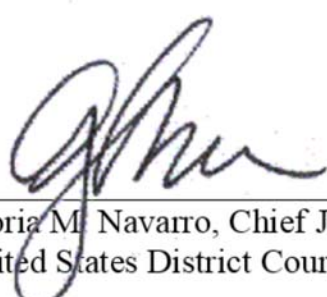
20 However, the Ninth Circuit has rejected Plaintiff’s interpretation of Section 1332(c)(1):  
21 “a bad faith action against a plaintiff’s own insurer is not a ‘direct action’ within the meaning of  
22 § 1332(c)(1).” *Searles v. Cincinnati Ins. Co.*, 998 F.2d 728, 728-29 (9th Cir. 1993) (citing  
23 *Beckham v. Safeco Ins. Co.*, 691 F.2d 898, 902 (9th Cir. 1982)). This Court cannot ignore  
24 binding Ninth Circuit precedent. *Dixon v. United States*, 548 U.S. 1, 4 (2006) (trial court  
25 correctly found itself bound by circuit precedent); *Panetti v. Quarterman*, 551 U.S. 930, 961

(2007) (district court was “of course” bound by circuit precedent); *Citizens For Better Forestry v. U.S. Dep’t of Agr.*, 567 F.3d 1128, 1134 (9th Cir. 2009) (Ninth Circuit holding was binding on the district court). Because this Court is bound by Ninth Circuit precedent, this Court must reject Plaintiff’s interpretation of the statute in light of the Ninth Circuit’s holding. Therefore, because this case does not constitute a “direct action” and Defendant has satisfied all other criteria to establish diversity jurisdiction, this Court has diversity jurisdiction under § 1332.

**IV. CONCLUSION**

**IT IS HEREBY ORDERED** that Defendant’s Motion to Remand (ECF No. 9) is **DENIED**.

DATED this 12th day of June, 2015.



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Gloria M. Navarro, Chief Judge  
United States District Court